

# **EXHIBIT “A”**

October 5, 2018

Maribel Torres-Hula, Community Superintendent  
One Fordham Plaza  
8<sup>th</sup> Floor, Room 835  
Bronx, N.Y. 10458

Dear Superintendent Hula:

On September 17, 2018, I received your letter which stated that I may submit a written response to the reasons you provided in the attached documentation, to consider whether my services as a probationer will be discontinued at the close of business on October 18, 2018. In response to this course of action, I feel it necessary to present to you documentation and sound reasoning prior to you making your final determination on my status as a probationer on October 18, 2018.

The first document you provided that I would like to address is the letter dated January 6, 2017. This letter addressed an allegation made against me on November 18, 2016. On November 18, 2016 I took a moment during class to aid student understanding as to how the new electronic gradebook, which teachers were encouraged to use by the school's administration, worked. I projected the gradebook and displayed fictitious grades, which would mimic behavior grades and homework grades, to demonstrate how students' grades could increase or decrease under specific circumstances – such as participating in class, completing classwork, and doing homework. “When asked if these were the students' grades you [I] replied ‘these weren't the students' current grades’”. The first marking quarter had just ended; there were no grades in the electronic gradebook at that time. As stated in the letter, the student who lodged the complaint was out of the room and “was informed by a classmate that while she was out of the room I displayed her failing grade to the entire class”. None of the other students that were in the class during the demonstration complained to administration or felt embarrassed over this demonstration, because I explained several times to students for their understanding that these were fictitious grades. There was no way that I could predict that a student would inform the complainant in the manner in which it happened and that the complainant would “feel embarrassed and begin to cry”.<sup>1</sup> Had the administration provided teachers with the ability to display the electronic gradebook with fictitious names, since teachers are not privy to creating classes in the system, I would have been able to demonstrate the grade policy with the hypothetical grades without it displayed with a student's names, as suggested by A.P. Ware. I repudiate A.P. Ware's conclusion that “I violated Chancellor's regulation A-820 and FERPA”. Since no part of a student's education record, however created, was divulged because the grades that were displayed were fictitious, there should have been no conclusion that states that I “intentionally displayed students' grades on the board”.<sup>2</sup> Furthermore, “In the case Owasso

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<sup>1</sup> Letter dated January 6, 2017

<sup>2</sup> *ibid*

Independent School Dist. No. I-001 v. Falvo, an Oklahoma mother claimed that teacher grade books were "educational records" and that peer grading embarrassed her children and violated their rights under the Family Educational Rights & Privacy Act (FERPA). The Supreme Court disagreed, saying, "We do not think FERPA prohibits these educational techniques."<sup>3</sup> Teacher gradebooks are not considered "educational records" by the Supreme Court, therefore I did not violate FERPA

Throughout the 2016-2017 school year, my first year as a teacher for the NYCDOE, I was commended by Principal Cox. "Ms. Cummings has shown a great deal of growth since the beginning of the year in her teaching".<sup>4</sup> In the Spring of 2017 Student Perception Survey, my results ranged from 13%-22% higher compared to the average of Middle School 118. (See Chart *Student Perception Survey – Spring 2017*)

### ***Student Perception Survey – Spring 2017***

<b>Topic Description</b>	<b>Result</b>	<b>Comparison to 10X118</b>
<b>Classroom Climate</b> – Overall Social and Learning Climate	79%	57%
<b>Classroom Engagement</b> -How attentive and invested students are in class	60%	45%
<b>Pedagogical Effectiveness</b> -Students' perception of the quality of teaching and amount of learning they experience from a particular teacher	84%	71%
<b>Rigorous Expectations</b> -How much a student feels a specific teacher holds them to high expectations around effort, understanding, persistence, and performance in class	79%	71%
<b>Teacher-Student Relationships</b> -How strong the social connection is between teachers and students within and beyond the classroom	80%	60%

Principal Cox further stated, "Congratulations on successfully showing growth in so many areas for this formal observation as compared to the fall".<sup>5</sup> Furthermore, as a first year teacher I was rated "Effective", as stated in the Annual Professional Performance Review – Advance Overall Rating<sup>6</sup>, as evidenced by the documentation you provided. The November 18, 2016 incident was never a cause of concern to Principal Cox, as evidenced by the fact she continued my probationary status and I returned to The William W. Niles School – Middle School 118 for the 2017-2018 school year.

<sup>3</sup> [https://www.educationworld.com/a\\_issues/issues279.shtml](https://www.educationworld.com/a_issues/issues279.shtml)

<sup>4</sup> Formal Observation 05/19/17

<sup>5</sup> ibid

<sup>6</sup> See Formal Observation Attachment

I would now like to address the “Conclusion” of OSI Case # [REDACTED] which was a part of your documentation. I want to stress that the allegation that I “used corporal punishment against Student A by pushing [my] knee into her back during a classroom demonstration has not been corroborated and is **unsubstantiated**”, and refute the finding that I “acted with poor judgement in conducting a lesson that inadequately incorporated the New York City DOE social studies curriculum and guidance for this topic”.<sup>7</sup>

Guidance for the topic, the Middle Passage, is found in the NYS curriculum as well as the NYC Department of Education Social Studies Unit of Study, Grade Seven Unit 1, which is also referred to as the Passport. The Resource Guide states, “This unit of study, developed with and for classroom teachers, is a publication of the Office of Curriculum, Instruction & Professional Learning, under the leadership of Anna Commitante. Members of the Social Studies Department and other staff worked with teachers to design the activities and lesson plans provided within. They offer a sequence of instruction that can be adapted and customized to meet your students’ individual needs.”<sup>8</sup> I used the Sample Lesson provided on page 144 of the Resource Guide. The learning objective was “to understand the experiences of enslaved Africans brought to America”. The learning objective in my lesson was, “Students will be able to describe the conditions slaves faced in the journey from Africa to the New World, thus get an understanding of the horrors of the Middle Passage”. As stated in the Sample Lesson’s NYC Social Studies Scope and Sequence, “Enslaved Africans utilized a variety of strategies to both survive and resist their conditions; Middle Passage-enslaved Africans were subjected to horrible conditions and atrocities while being transported from Africa to the New World”<sup>9</sup>, thus providing a guide as to what the students need to “understand”. Moreover, the Sample Lesson states under *Social Studies Practices and Historical Thinking Skills*, “Gathering, Interpreting, and Using Evidence: Identify, select, and evaluate evidence about events from diverse sources”.<sup>10</sup> The Resource Guide provided documents for analysis. As stated by the Office of Curriculum, Instruction, and Professional Learning, the Resource Guide’s Sample Lesson “can be adapted and customized to meet your students’ individual needs”. Furthermore, I was abiding by Principal Cox’s directive. “Plan to use the Passport Social Studies units as your core curriculum document for each unit, making adjustments as needed from there,”<sup>11</sup> even though “a supervisor may suggest elements to include in a lesson, [but] lesson plans are by and for the use of the teacher. Their format and organization, including which elements are to be included...are appropriately left to the discretion of the teacher”.<sup>12</sup> Principal Cox’s statement that I “engaged in insubordination when I failed to adhere to the Passport Curriculum”<sup>13</sup> is false. I followed what was stated by the Office of Curriculum, Instruction, and Professional Learning as well as the directive of Principal Cox, even though, as previously stated, it is understood by the DOE and UFT that “a supervisor may suggest elements to include in a lesson, [but] lesson plans are by and for the use of the teacher. Their format and

<sup>7</sup> OSI Investigative Report – OSI Case # [REDACTED]

<sup>8</sup> Office of Curriculum, Instruction, and Professional Learning, and Social Studies Department. “Native Americans Early Encounters and Colonial Development.” Native Americans Early Encounters and Colonial Development, NYC Department of Education.

<sup>9</sup> Ibid, pg. 144

<sup>10</sup> Ibid, pg. 144

<sup>11</sup> Formal Classroom Observation, 05/19/17

<sup>12</sup> JOINT DOE/UFT LESSON PLAN LETTER, September 19, 2014

<sup>13</sup> Letter Dated September 12, 2018; NOTE this Letter is in the Grievance Process due to it being untimely, Articles 20 & 21A of the Teacher’s Contract

organization, including which elements are to be included...are appropriately left to the discretion of the teacher".<sup>14</sup>

Teachers have professional discretion in regards to lesson plans such as "their format and organization, including which elements are to be included".<sup>15</sup> Instead of using the documents for analysis, I opted to use a 5 minute video clip for differentiation, which would aid in delivering the historical information in a visual, musical, and auditory way, thus adapting the sample lesson for the needs of my students. Incorporating the theory of multiple intelligences into the classroom is beneficial to all students, both with and without disabilities. The 5 minute video clip was taken from the film, *Freedom*.<sup>16</sup>

Teaching Tolerance is a project of the Southern Poverty Law Center (SPLC), providing free resources to educators who work with children from kindergarten through high school<sup>17</sup>, and is supported by the NYCDOE, as evidenced by the DOE website hyperlinks that bring you to resources by Teaching Tolerance. According to the SPLC, one of the key concepts, "that students must truly understand if they are to grasp the historical significance of slavery"<sup>18</sup> is that "enslaved people resisted the efforts of their enslavers to reduce them to commodities in both revolutionary and everyday ways".<sup>19</sup> This key concept is reflected not only in the Sample Lesson provided in the Resource Guide, but in my lesson and the 5 minute video clip from the film *Freedom*. "The Middle Passage was the voyage of enslaved people from the west coast of Africa to the Americas. Enslaved people endured traumatic conditions on slavers' ships, including cramped quarters..."<sup>20</sup> One suggestion given by the SPLC on how to teach the topic is to use "excerpts from slaver John Newton's journal describe the terrors of the Middle Passage, including disease, suicide attempts and sexual assault. He also discusses the ways enslaved people resisted their captors..."<sup>21</sup> The video clip from the film *Freedom* that the class viewed shows John Newton, the Captain of a slave ship, sailing from Africa with a cargo of slaves, bound for America. It is important to note that John Newton was a major influence on the Slave Trade Act of 1807 which prohibited slave trade in Great Britain, and was author of the hymnal, *Amazing Grace*.

Principal Cox states in the same letter that I "incorporated an R-rated movie entitled *Freedom*"<sup>22</sup> into my lesson. Principal Cox's statement is false. There is nothing R-rated in the 5 minute clip that was viewed in the class; there is no nudity, no strong language or profanity, no strong violence, no sexual content and no drug abuse. Its content aligns exactly with the documents provided in the Sample Lesson of the Resource Guide. As evidenced by Student D, "he explained that the video clip depicted slaves seated in close proximity to each other, in addition to the inhumane conditions and poor treatment".<sup>23</sup>

<sup>14</sup> JOINT DOE/UFT LESSON PLAN LETTER, September 19, 2014

<sup>15</sup> *ibid*

<sup>16</sup> <https://www.youtube.com/watch?v=hP3j5qIPETk>

<sup>17</sup> <https://www.tolerance.org/sites/default/files/2018-05/TT-Podcast-Transcript-Film-and-the-History-of-Slavery-May2018.pdf>

<sup>18</sup> <https://www.tolerance.org/sites/default/files/2018-02/TT-Teaching-Hard-History-Key-Concepts-Summary-Objectives-Jan2018.pdf>

<sup>19</sup> *ibid*

<sup>20</sup> <https://www.tolerance.org/frameworks/teaching-hard-history/american-slavery/summary-objective-2>

<sup>21</sup> *ibid*

<sup>22</sup> Letter dated September 12, 2018

<sup>23</sup> OSI Investigative Report – OSI Case # [REDACTED]

Furthermore, Principal Cox's erroneous and inaccurate descriptions of the 5 minute clip of the film *Freedom* that was viewed in class is evident:

- Principal Cox states the lesson "diverged from the lesson and that represented poor judgement in the materials selection".<sup>24</sup> Principal Cox's statement is false. The content from the 5 minute video clip from the film *Freedom* viewed in the class depicted and perfectly aligned with the documents provided in the Sample Lesson in the Resource Guide.
- Principal Cox states that "the excerpt from the film *Freedom* that [I] showed depicted torture and murder by drowning of African people traveling into slavery".<sup>25</sup> Principal Cox's statement is false. The depicted "torture" required understanding of the experience. As for her assertion of "murder by drowning", that is not depicted in the 5 minute video clip. The clip showed how the Africans, who were already dead, were shrouded and thrown overboard.
- Principal Cox states that the 5 minute video clip whose content aligned and depicted the textual documents provided in the Sample Lesson had a "graphic depiction of violence".<sup>26</sup> Principal Cox's statement is false. That is not in the clip. However, with Principal Cox's assertion, should we as social studies teachers not show clips from *The Patriot* when teaching the Revolutionary War? Clips from *Selma* when teaching Civil Rights? Or the planes crashing into the Twin Towers, which is shown every year on television, when teaching about 9/11? As previously stated, "lesson plans are by and for the use of the teacher. Their format and organization, including which elements are to be included...are appropriately left to the discretion of the teacher".<sup>27</sup>

The 5 minute video clip visually showed "enslaved Africans that utilized a variety of strategies to both survive and resist the conditions".<sup>28</sup> Furthermore, it visually depicted how Africans were subjected to horrible conditions and atrocities while being transported from Africa to the New world. In fact, the video depicted the points made in the Sample Lesson's Scope and Sequence, which coincide with the documents in the Sample Lesson within the Resource Guide. Thus insubordination did not occur. As previously stated, I adjusted "as needed from there"<sup>29</sup>, which was directed by Principal Cox.

According to the "Conclusion" of the Investigative report, "Ms. Cummings' lesson on the Middle Passage, delivered to classes 407 and 408, were described to the Office of Academic Policy and it was determined that they significantly diverged from best practices".<sup>30</sup> According to the Investigative Report, "an email exchange between the assigned investigator, OSI Deputy Director Christina Nowak, Sara Shumway, Director of Academic Policy, and Chris Sandor, Chief of Staff Curriculum, Instruction, and professional learning, occurred between April 3 and April 23, 2018".<sup>31</sup> According to the Department of Education and the UFT, "lesson plans are but one part of the process of creating and developing quality instruction that engenders learning. A teacher's lesson plan is not the lesson plan itself. A lesson unfolds in the classroom as a teacher works with his or her own students. Planning may be evaluated through

<sup>24</sup> Letter dated September 12, 2018

<sup>25</sup> *ibid*

<sup>26</sup> *ibid*

<sup>27</sup> Letter dated September 12, 2018

<sup>28</sup> Office of Curriculum, Instruction, and Professional Learning, and Social Studies Department. "Native Americans Early Encounters and Colonial Development." Native Americans Early Encounters and Colonial Development, NYC Department of Education.pg. 144

<sup>29</sup> Formal Classroom Observation, 05/19/17

<sup>30</sup> OSI Investigative Report – OSI Case # [REDACTED]

<sup>31</sup> *ibid*

observation of a lesson being taught, by the professional discussions taken place between the teacher and supervisor, and of course through discussion and review of the plan used to teach an observed lesson. The lesson plan can not be evaluated in isolation, but as part of the planning cycle of the observed lesson". According to the NYCDOE "Advance is an integral part of how we recognize and strengthen teaching practice".<sup>32</sup> According to the NYCDOE Advance Guide for Educators 2017-2018:

"Because teaching is a complex and multi-faceted skill, measuring teacher effectiveness and providing developmental opportunities to teachers is a complex and multi-faceted process. No single tool or method can fully measure a teacher's performance. That's why Advance uses multiple measures – Measures of Teacher Practice (MOTP) and Measures of Student Learning (MOSL) – to provide teachers with access to various sources of feedback and more support to develop as educators. Our belief is that a successful system of teacher development and evaluation is one that combines actionable feedback from evaluators at multiple points throughout the year and a clear understanding of what students learn over the course of a semester or year. This is done through Initial Planning Conferences at the beginning of the year; multiple classroom observations, followed by verbal and/or written feedback throughout the year; reviewing student work and student performance on beginning of year and end of year assessments; and Summative End-of-year Conferences."<sup>33</sup>

Moreover, the Danielson Framework for Teaching is what is used to evaluate teachers' lessons. "During an observation, your evaluator will rate you on observable evidence related to eight key components of the Danielson Framework for Teaching. These are:

- 1a: Demonstrating knowledge of content and pedagogy;
- 1e: Designing coherent instruction;
- 2a: Creating an environment of respect and rapport;
- 2d: Managing student behavior;
- 3b: Using questioning and discussion techniques;
- 3c: Engaging students in learning;
- 3d: Using assessment in instruction;
- 4e: Growing and developing professionally.

"Fairness as well as effectiveness require that values be made explicit and that fact rather than assumption be the basis for assessing blame for deficiencies."<sup>34</sup> An important public policy issue is at stake here. "Everything about our evaluation and development system is based upon the understanding that a constructive, professional process is the best way for colleagues to collaborate to help children learn."<sup>35</sup> The "Email Exchange between OSI and the Office of Academic Policy"<sup>36</sup>, violates the Department of Education's own policy on how to evaluate a teacher's lesson and performance. Describing a lesson, to which the investigator did not observe, to the Office of academic policy and anyone else who did not observe the lesson for that matter, is negligent and an infringement upon the due process afforded to teachers in regards to evaluation; the lesson must be observed. It can not occur in someone's mind as an imaginary event. Mr. Sandor stated, "In this case the lesson taught is not what

<sup>32</sup> <http://www.uft.org/files/attachments/advance-2017-18.pdf>

<sup>33</sup> *ibid*

<sup>34</sup> Gross, James A. Teachers on Trial: Values, Standards Equity in Judging Conduct and Competence. ILR Press, 1988. P.2

<sup>35</sup> Letter dated September 19, 2014

<sup>36</sup> OSI Investigative Report – OSI Case # [REDACTED]

was provided and if I were to observe the lesson I would rate it unsatisfactory as well".<sup>37</sup> Mr. Sandor's statement is objectionable. Mr. Sandor's "conclusions" are based on hearsay evidence and have no basis in fact. The information he received was hearsay due to the fact that he, nor the investigator, observed the lesson. Therefore, the conclusion of "poor judgement" including but not limited to Principal Cox has no basis of fact. Mr. Sandor, nor anyone else for that matter, can not pass judgement and especially come up with a determination that the lesson "significantly diverged from best practices".<sup>38</sup> However, there was an observer of the lesson. Ralph Hudson, a teacher on his "prep period" who was present in the classroom. He commented on the lesson in the following manner:

"as an African-American, he took no issue with the contents of the lesson. He described the lesson as appropriate and stated that he felt the lesson was within the scope of effectively educating students about the harsh conditions endured by slaves during transport".<sup>39</sup>

According to the NYCDOE own policy, Ralph Hudson would have been the only appropriate person to evaluate the lesson due to the fact that he observed it. The danger of allowing hearsay is no more graphically displayed than by Principal Cox in her letter dated September 12, 2018 in which she states, "the film that you showed depicted the torture and murder by drowning of African people". As previously stated, the 5 minute video clip from the film *Freedom* did neither. It showed the conditions on the ship. No African people were drowned. When Africans died they were shrouded and thrown overboard. The slaves were a commodity, which were not the property of the crew. Preserving as much of that commodity was in their best interest.

The "Conclusion" of the OSI Investigative Report states "Specifically, the DOE does not ever include or encourage re-enactments of historical events where students take on the roles of victimized people".<sup>40</sup> The teachable moment arose during the lesson, which was obviously not in my lesson plan because a teachable moment is "is an unplanned opportunity that arises in the classroom where a teacher has a chance to offer insight to his or her students. A teachable moment is not something that you can plan for; rather, it is a fleeting opportunity that must be sensed and seized by the teacher. Often it will require a brief digression that temporarily sidetracks the original lesson plan so that the teacher can explain a concept. Teachable moments can happen anytime, and they often pop up when they are least expected."<sup>41</sup> The teachable moment stemmed from when Student A, an African-American student, began mocking the content in video clip, in particular the close quarters in which the Africans on the ship sat. As I stated to investigators on March 15, 2018, "Student A mocked the contents of the video by stating that she could sit how the slaves were sitting because she sat like that all the time".<sup>42</sup> This is corroborated by the students who were interviewed in the Investigative Report, and in particular, as reported by Student J, "Student A was not taking the lesson seriously; she was waddling around the classroom mocking the video".<sup>43</sup> That is when I stopped the video and addressed the class, which is corroborated by Ralph Hudson. "According to Mr. Hudson, several students were laughing and joking during the video, so Ms. Cummings paused the video and explained that the class needed to respect the material and take it seriously."<sup>44</sup> It was at that time that I asked for volunteers so as to demonstrate the

<sup>37</sup> OSI Investigative Report – OSI Case # [REDACTED]

<sup>38</sup> OSI Investigative Report – OSI Case # [REDACTED]

<sup>39</sup> OSI Investigative Report – OSI Case # [REDACTED]

<sup>40</sup> OSI Investigative Report – OSI Case # [REDACTED]

<sup>41</sup> <https://www.thoughtco.com/what-is-a-teachable-moment-2081657>

<sup>42</sup> OSI Investigative Report – OSI Case # [REDACTED]

<sup>43</sup> OSI Investigative Report – OSI Case # [REDACTED]

<sup>44</sup> OSI Investigative Report – OSI Case # [REDACTED]



close quarters so that any misunderstandings could be clarified in a kinesthetic way. "Dewy reminds us that it is the authentic experience, the continuity of the authentic experience, and how it relates to what we already know and understand, that draws us into the process and makes learning meaningful."<sup>45</sup> When students were seated on the floor for the exercise, I "asked that they 'scootch' closer together"<sup>46</sup> as to demonstrate the close quarters. Student H further asserted that, "Student A continued to disregard the importance of the lesson"<sup>47</sup> during the exercise and Student I stated, "Student A continued to not take the lesson seriously".<sup>48</sup> The exercise lasted no longer than 20 seconds once students were on the floor 'scootching' together. Once one of the students said, "Ms. we're really close together", I stated that that was the point of the exercise and then I instructed students to return to their seats. The students were never directed to re-enact the historical event of the Middle Passage. The students were never directed to take on the role of a slave. As evidenced by students B, D, E, F, H, I, J and K, no students interviewed stated that the demonstration was a role-play activity or a re-enactment. Principal Cox even stated in the Investigative Report that "the purpose of the exercise was to show the class how slaves were situated in close quarters".<sup>49</sup>

According to the "Conclusion" of the Investigative Report, students and staff members who were "present during the lessons administered by Ms. Cummings on this subject expressed their discomfort with the content of the lesson and the manner in which Ms. Cummings conducted the lesson".<sup>50</sup> In refutation and contradiction to that statement:

- According to Student D, Student A said she was comfortable.
- Student E: "I honestly don't care".<sup>51</sup>
- Student F: "The students who participated in the demonstration thought it was funny."<sup>52</sup>
- Student I: "did not feel uncomfortable"<sup>53</sup>
- Student J: "Participating students and the other students in the class were laughing during the demonstration"<sup>54</sup>
- Student K: "She was not uncomfortable with the content of the video"<sup>55</sup>
- Principal Cox: "Several students began laughing or not taking the lesson seriously"; "The purpose of the exercise was to show the class how slaves were seated in close quarters."<sup>56</sup>
- Anthony Worrell: the special education co-teacher of class 407, who was in class 407 only, who was in his first year in the NYC Teaching Fellows Program and who does not possess a degree in history stated, "he felt the lesson had little connection to the Middle Passage"<sup>57</sup>

<sup>45</sup> Beal, Candy, and Cheryl Mason. Bolick. Teaching Social Studies in Middle and Secondary Schools. Pearson Central Pub. Dept., 2013.

<sup>46</sup> OSI Investigative Report – OSI Case # [REDACTED] pg 10

<sup>47</sup> OSI Investigative Report – OSI Case # [REDACTED] pg 3

<sup>48</sup> OSI Investigative Report – OSI Case # [REDACTED] pg 4

<sup>49</sup> OSI Investigative Report – OSI Case # [REDACTED] pg 6

<sup>50</sup> OSI Investigative Report – OSI Case # [REDACTED] pg 11

<sup>51</sup> OSI Investigative Report – OSI Case # [REDACTED] pg 3

<sup>52</sup> OSI Investigative Report – OSI Case # [REDACTED] pg 3

<sup>53</sup> OSI Investigative Report – OSI Case # [REDACTED] pg 4

<sup>54</sup> OSI Investigative Report – OSI Case # [REDACTED] pg 4

<sup>55</sup> OSI Investigative Report – OSI Case # [REDACTED] pg 5

<sup>56</sup> OSI Investigative Report – OSI Case # [REDACTED] pg 6

<sup>57</sup> OSI Investigative Report – OSI Case # [REDACTED] pg 7

- Ralph Hudson: The only observer of the lesson stated, “as an African-American, he took no issue with the contents of the lesson. He described the lesson as appropriate and stated that he felt that the lesson was within the scope of effectively educating students about the harsh conditions endured by slaves during transport...Mr. Hudson stated that from a personal standpoint, he would not have had an issue with his own children participating in the lesson in question. He added that it was his belief that if Ms. Cummings were African-American, the incident would have been a non-issue.”<sup>58</sup>

As evidenced by the statements provided above within the Investigative Report, I was “cognizant of the sensitive nature of the topic” and I did not “create discomfort for students and staff members”.

Lastly, “classification of conduct are not standards of conduct, and any person subjected to disciplinary penalties for misconduct has a right to know the standards by which his or her conduct will be judged.”<sup>59</sup> In regards to the statement made by the Department of Education, in particular that “the DOE does not ever include or encourage re-enactments of historical events where students take on roles of victimized people”, I would like for the NYCDOE to provide documentation to which this policy is stated. Though my lesson and teachable moment did not include role playing or re-enactments, I would still like to have the NYCDOE produce the policy to which the DOE believes my conduct was not up to standard. If a policy truly exists, in all of my professional development that policy was never disseminated to teachers at Middle School 118. I would also like to state that I believe that this action could be considered double jeopardy due to the multiple punishments. I have already been disciplined by Principal Cox twice; once when she removed me from teaching class 408 from January 23, 2018-January 25, 2018 and by her Disciplinary Letter dated September 12, 2018, which the UFT is supporting my grievance and taking it to Step 2 regarding her disciplinary letter because it “refers to an event that occurred more than 3 months ago. The letter is untimely”<sup>60</sup> as outlined in the Contract under Articles 20 and 21A. As previously stated, the November 18, 2016 incident was never a cause of concern to Principal Cox, as evidenced by the fact she continued my probationary status and I returned to The William W. Niles School – Middle School 118 for the 2017-2018 school year. As a first year teacher in the NYCDOE, I was rated as an “Effective” teacher. There was no cause of concern regarding my professional integrity or judgement. Before my Reassignment on February 2, 2018 zero observations were conducted to evaluate my teaching practice. In addition, as a second year teacher in the NYCDOE I was scheduled to teach 4 ICT classes with three different co-teachers, with one teacher in his first year in the NYC Teaching Fellows to which he had zero pedagogical experience and did not possess a degree in my content area, and a second co-teacher in Teach for America and who was in her second year, but first year as a special education teacher. If my “judgement” was a cause of concern, as a second year teacher, why would I be scheduled to work with novices?

My conjecture is that this proceeding to consider whether my services as a probationer will be discontinued at the close of business on October 18, 2018 is another disciplinary action/punishment stemming from the Office of Special Investigation Case # [REDACTED] to which the allegation was unsubstantiated. It is my postulation that none of this would have been an issue had Principal Cox

<sup>58</sup> OSI Investigative Report – OSI Case # [REDACTED]

<sup>59</sup> Community School Dist.18 v. Richard Errera, NYS ED Dept. (1984)

<sup>60</sup> UFT Step 1 grievance Form

spoken to Mr. Hudson in January regarding the lesson in question in the Investigative Report. As per the joint letter, by the DOE and UFT and by contractual guidelines, he was a witness and is the only one who could have possibly evaluated the lesson. Had Principal Cox spoken to Ralph Hudson in January, who states he found nothing wrong with the lesson found that the lesson was effectively educating students; the reporter from the Daily News would not have had a story with a false allegation to report resulting in my reassignment, the OSI Investigation, and the subsequent proceeding I find myself in.

Thank you in advance for your time and consideration. I look forward to your response.

Respectfully,

Patricia Cummings